IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 18 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT SHIVABHAI PATEL

Versus

THIRD SPECIAL LAND ACQUISITIONOFFICER

Appearance:

MR NITIN M AMIN for Petitioner

MR KG SHETH Ld. AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/08/2000

ORAL JUDGEMENT

This is claimant's appeal against the impugned judgment and order dated 13.6.83 rendered by the learned Extra Assistant Judge, Ahmedabad (Rural) at Narol in Land Reference Case No. 368/1982.

The facts leading to the reference before the learned Extra Assistant Judge, might briefly be noted:

The land bearing block no. 266 and 274 admeasuring 9119 sq.mtr. situated in village Saij, tal. Dholka, district Ahmedabad, came to be acquired by the Special Land Acquisition officer as per Notification under sec. 4 of the Land Acquisition officer, 1894 (for short 'the Act') dated 9.6.80 and Notification under sec. 6 of the Act dated 22.6.1981, by his award dated 18.1.1982, the Land Acquisition Officer awarded compensation at the rate of Rs. 4/ per sq. mtr. The claimant proposed reference against the said award. Upon hearing of the reference in the aforesaid Land Acquisition Case, the learned Extra Assistant Judge, granted additional compensation at the rate of Rs. 3.50 per sq.mtr. deciding the value of the land on the date of its acquisition to be at the rate of Rs. 7.50 per sq. mtr. The claimant has carried the matter before this court by way of an appeal under sec. 54 of the Act. It has now been heard finally.

It was the case of the claimant before the learned Extra Assistant Judge, that the land in question was hardly 5 to 7 kilometers away from Dholka town and just adjacent to the village site. It had all the facilities of education (primary and secondary), co-operative society, research centre of agriculture, electricity, water facility and transport facility and G.I.D.C. complex has been stationed in Dholka. The land in question was fertile and gave yield of plantain, sugarcane, tobacco and other crops. It had attained full potentiality both in the matter of yield as well as development. The claimant, therefore, canvassed value of the land at the rate of Rs. 14/ per sq. mtr. before the learned Extra Assistant Judge. In justification of the claim, the claimant also relied upon fixation of rent at the rate of Rs. 0.70ps per annum per sq.mtr. fixed by the learned Extra Assistant Judge, on account of O.N.G.C. operation being carried out in the land in question. The claimant has worked out rate at Rs. 15/ per sq.mtr. on the basis of said rental amount capitalised for a period of 20 years. Upon appreciation of the evidence and hearing of the parties, the learned Extra Assistant Judge, came to the conclusion that it is just and fair to fix the rate of the land in question at Rs. 7.50 per sq.mtr. He also awarded further amount at the rate of 8% as additional compensation as severance charges and 15% by way of solatium and interest at the rate of 4.5% from the date of taking over possession of the land in question till the amount of compensation so

fixed is deposited in the court.

It has been submitted by the learned advocate appearing for the appellant-claimant that the learned Extra Assistant Judge has committed an error in not accepting the evidence adduced by the claimant. According to the submission of the learned advocate, there is no reason for the learned Extra Assistant Judge,in not accepting claimant's evidence which remained unchallenged. It would, therefore, be necessary to deal with the evidence that has been adduced by the claimant before the learned Extra Assistant Judge. The claimant has examined himself at ex. 9. He has deposed that the village in which the land is situated has population of around 7000 persons. The said village is located on Bagodara-Kheda road and is at a distance of around 5km from Dholka town. The village has primary school, milk produce co-operative society, other co-operative society, health centre etc. It has facilities of water, electricity, transport.It has agricultural operations in the product of sugarcane, banana and tobacco. The land in question is situated at a distance less then 2 km. from the village and nearby Sabarmati river. It is fertile land. It consists of a well coupled with electric motor. The claimant has been taking crops of banana, sugarcane and other cash crops. According to him. after deducting expenses, he would have earned Rs.3000/ to Rs. 4000/ by way of net profit per year.When O.N.G.C. had taken possession of the land in question, the Government fixed rent at Rs. 0.50ps per sq.mtr. per year, whereas the court enhanced the said amount to Rs. 0.70ps per sq.mtr. per year. This was for the purpose of carving out the road for O.N.G.C. On account of such road, the value of the land in question also stood enhanced. Out of the land which was so taken for the O.N.G.C. operation, 45 gunthas of land was returned and that was rendered useless on account of O.N.G.C. operation,which was carried out with the aid of vehicles and Bull Dozers. The claimant, therefore, canvassed enhancement in the compensation also bearing in mind these facts. In his cross-examination, the claimant admitted that he did not have books of account with regard to the crops of Banana. He denied that the compensation awarded by the Land Acquisition Officer was just and adequate. There is no other cross-examination. On being asked, learned AGP has fairly submitted that the Land Acquisition Officer has not adduced any other evidence to controvert the facts deposed to by the claimant. He has however, referred to the impugned judgment where the evidence which was placed on record of the Land Acquisition Officer has been considered. This

is how the learned Extra Assistant Judge has considered the matter, "considering in the context of what I have reasoned and stated hereinabove, when award is read, it is manifest that Land Acq.Officer has taken into consideration the fact that rental value of the land has been enhanced to Rs. 0.70ps per sq.mt. by District Court and that on the basis of 20 times thereof, come to Rs. 14-00 per sq.mt. He has also considered the fact of potential value of the land giving yield of plantains and for which, he has taken into consideration village form records as well. He has considered sale instances which were at very low rate in respect of sales made in 1978 and 1979. True that Land Acq.Officer has considered all the aspects and true that he has awarded compensation at the rate of Rs. 4/ per sq. mt. which cannot be said to be miserably low or to say it as a dole to beggar. Yet, as I said here above, whole concept of compensation is so motivated and so implemented that a person deprived off agricultural land should not be deprived off that of such price by which he is not satisfied. As held in the aforesaid case of Patna High Court, land prices have been spiralling up and that money value is draining low steadily, even at the rate of Rs. 4/ per sq. mt. in 1980, is as a matter of fact, very low amount compared with aspect that person is deprived off property which is banon the livelihood and once deprived thereof, he has no source of earning livelihood. Further in considering the compensation in respect of agricultural land, it cannot be ignored that agricultural land isnot only the property having its value, it is the very basis on which very foundation of living of the occupant is based. Thus, in considering the compensation in respect of suitability, justness, reasonableness, it has to be considered that person holding agricultural land is to be compensated of the property with reference to its pecuniary value as also its productivity which the basis of continuous livelihood based on the possession. Considered in all these aspects and with most specific reference to my conclusion, compensation at the rate of Rs. 5/ per sq.mt. should be the barest minimum for the purpose of agricultural land and therefore, I conclude that compensation awarded to the claimant has to be raised so that he may feel sense of suitability and in the context of the year in which land is acquired, the location of land and all factors. I conclude that rise of Rs.3-50 per sq. mt. would be just, reasonable and adequate so as to state that compensation at the rate of Rs. 7.50 per sq. mt. would be just, reasonable and adequate." It will be clear from what has been observed by the learned Extra Assistant Judge that there is a clear error in not dealing effectively with the evidence of claimant when he

testified that his net income was Rs. 3500 to Rs. 4000/ per year. It is settled law that one of the methods to arrive at just and proper compensation is to work out the net income or yield from the land which has been acquired. It is true that the claimant admitted that he did not have the books of account to substantiate his say that his net income was Rs. 3500/ to Rs. 4000/ per year. But in absence of any contrary evidence and bearing in mind the fact that the crops of banana,sugarcane and tobacco were regularly taken from the field and bearing in mind the fact that reasonable agricultural income on which livelihood of the claimant and his family was based,it can hardly be said that the claimant exaggerated that he had at least Rs. 3500/ of net income from the land in question. Thus, when the yield of the land in question is taken as the basis,it would be just and proper as also reasonable to accept the evidence of the claimant to the effect that he had at least Rs. 3500/ per year as net income from the yield of the land in question. Now, if multiplier of 10 years is taken, it would give figure of Rs. 35000/ for working out the rate per sq.mtr. The said amount will have to be divided by Rs. 2300/ (One Vigha = 2300 sq. mtr. since the yield is stated tobe per one Vigha) that would give rate of Rs. 15/ per sq.mtr.

As against this working submitted by Mr. Amin learned advocate for the appellant-claimant, learned AGP Mr KG Sheth submitted that even if this is to be taken as the rate per sq. mtr. development charges will have to be deducted for the purpose of working out the rate. Mr Sheth placed reliance upon a decision of the Apex Court in the case of U.P. Jal Nigam Lucknow, through its Chairman and Anr. vs. Karla Properties (P) Ltd., Lucknow & Ors., reported in AIR (1996)3 SCC p 124. Referring to para-7 of the citation, Mr Sheth submitted that 1/3 of the land price should be deducted towards development charges. Now there is great deal of substance in this submission of Mr Sheth. Admittedly road has already been carved out from the land in question and it can hardly be denied that on account of such road, there is lot of development of the area in which the land is situated. This is what the Apex Court observed in para-7 of the citation: "In view of the settled legal position that the compensation should be determined on the basis of the market value of the acquired land prevailing as on March 1973, though the Attorney General repeatedly argued that the acquired land was not situated in a developed area, while Shri Gopal Subramaniuam contended that it is at the corner of the developed area and that therefore, the land commands

higher market value. Even the contention of Gopal Subramnium on the situation of the land is accepted. The admitted circumstance that can be taken into consideration is that the land was acquired to establish pump station to drain out flood water in the low lying area. In other words, as in 1973, the lands were not in a developed condition and that the lands are near the submerged area and the acquisition is to set up pump station to drain out flood water. It would be obvious that in course of time, there would be development and as in 1992, the area might have been fully developed. But by operation of sec. 24 of the Act, the subsequent development is irrelevant for determination of the compensation. Though the Attorney General repeatedly referred to the statistical data of the market value in 1980-82 at Rs. 10 to 15 per sq. ft., it is equally settled law that the data is not evidence unless evidence is adduced. It is equally settled law that when a large extent land is acquired, it cannot be determined on square foot basis. Therefore, it should be determined only on the basis of yardage. If the principle of determination of compensation on yardage basis is adopted, it is equally settled law that at least 1/3rd of the land require should be deducted towards developmental purposes, namely, providing road, electricity, drainage facility and other betterment developments. In 1989, when the respondent himself had purchased property, it had valued the market value at Rs. 60,000. Therefore, it is further settled law that the same would form basis, provided the sale is bonafide sale between willing party in normal market condition and it was not intended to inflate the market value of the land under acquisition. As found earlier, in 1973, there was no development since the very acquisition was for draining out flood water in that area. It obviously does not command large market value but in due course, neighboring area might have developed. Considered from this perspective and in the facts and circumstances, we are of the considered view that no useful purpose would be served by remitting the case to the High Court or by directing the Land Acquisition Officer to determine compensation. We are of the view that the respondent would be entitled to a total compensation of Rs. 25,000/. The respondent is also entitled to interest @ 6% from the date of taking possession till the date of deposit of the amount in the court. The respondent is also entitled to 15% solatium on Rs. 25,000/ determined as compensation. The appellant is directed to deposit the said amount within six months from the date of the receipt of this order. If possession of any land in excess of the land covered by sec. 4(1) has been taken, our order would not cover

it and appropriate action according to law should be taken." This would give reasonable market rate of the land in question on the relevant date to Rs. 10/ per sq. mtr.

The aforesaid working and resultant conclusion would further stand fortified from the working which can be made on the basis of rental income ascertained by the Court at Rs. 0.70ps p.a. If such a rental income is capitalised for a period of 20 years that would also reach rate of around Rs. 14/- per sq.mtr. It can thus be visualised that the claimant cannot be said to have exaggerated while testifying about the net yield of land in question.

It has been submitted that the Land Acquisition Officer considered all the aspects coupled with the sale instances of the year 1978-79; however, the said evidence was not canvassed before the learned Extra Assistant Judge. The claimant did not have the opportunity to explain the said evidence by referring to the sale-deeds, if they were produced and proved by examining the witnesses. Thus, the material with regard to the nature of the land, potentiality of the land and yield of the land in so far as the sale instances are concerned, was not before the learned Extra Assistant Judge and was not brought to the notice of the learned Extra Assistant Judge.Thus, the same cannot be taken into consideration in this appeal. Therefore, the only basis on which just and reasonable compensation could be worked out by ascertaining market value is on the basis of yield or on the basis of rent awarded by the Court and accepted by the State. In either case, compensation that can be awarded to the claimant would be at least Rs. 10/ per sq.mtr. as aforesaid. The learned Extra Assistant Judge has awarded Rs. 7.50 per sq.mtr. and thus awarded additional compensation at the rate of Rs. 3.50 per sq.mtr. Thus, the claimant would be entitled to enhancement at the rate of Rs. 2.50 per sq.mtr. in this appeal (at the total rate of Rs. 10/ per sq. mtr.).

Mr Nitin Amin learned advocate appearing for the appellant-claimant also canvassed award of solatium at the rate of 30% as envisaged by sec. 23(2) of the Act and, interest at the rate of 9% in the first year and for the rest of the period, till up to the date on which the payment is made at the rate of 15% per annum. The learned Extra Assistant Judge, has awarded solatium at the rate of 15% and interest at the rate of 4.5%.Mr KG Sheth has submitted that as per the provisions prior to the amendment, solatium at the rate of 15% and interest

at the rate of 4.5% have rightly been awarded by the learned Extra Assistant Judge. The question has now not remained res-integra. It has been settled by the Apex Court in the case of Union of India and anr. vs. Raghubir Singh (dead) by LRs.etc., reported in AIR 1989 SC 1933. Reference has been made to what the court has said in para-34 of the citation. The Apex court has dealt with the Land Acquisition (Amendment) Act, (1984). Provision with regard to enhanced solatium and enhanced rate of interest has been made applicable to "any award made by the Collector or the Court or to any order passed by the High Court or Supreme court in appeal against any such award under the provisions of the Principal Act after the 30th day of April, 1982 {the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People} and before the commencement of this Act." This transitional provision came to be considered by the Apex Court in the case of Raghubir Singh (supra) and these are the final observations appearing in para-34 of the citation.

Our attention was drawn to the order made in

> State of Punjab v.Mohinder Singh, (AIR 1982 SC 758) (supra),but in the absence of a statement of the reasons which persuaded the learned Judges to take the view they did find it difficult to endorse that decision. It received the approval of the learned Judges who decided Bhag Singh (AIR 1985 SC 1576) (supra), but the judgment in Bhag Singh (supra) as we have said earlier, has omitted to give due significance to all the material provisions of S. 30(2), and, consequently we find ourselves at variance with it. The learned Judges proceeded to apply the principle that an appeal is a continuation of the proceeding initiated before the Court by way of reference under sec.18 but, in our opinion, the application of a general principle must yield to the limiting terms of the statutory provision itself. Learned counsel for the respondents has strenuously relied on the general principle that the appeal is a re-hearing of the original matter,but we are not satisfied that he is on good ground in invoking that principle. Learned counsel for the respondents points out that the word 'or'' has been used in S. 30(2) as a disjunctive between the reference to the award made by the Collector or the Court and an order passed by the High Court or the Supreme Court in appeal and, he says, properly understood it must

> mean that the period 30 April, 1982 to 24 September, 1984 is as much applicable to the appellate order of the High Court or of the Supreme Court as it is to the award made by the Collector or the Court. We think that what Parliament intends to say is that the benefit of S. 30(2) will be available to an award by the Collector or the Court made between the aforesaid two dates or to an appellate order of the High Court or of the Supreme Court which arises out of an award of the Collector or the Court made between the said two dates. The word 'or' is used with reference to the stage at which the proceeding rests at the time when the benefit under S.30(2) is sought to be extended. If the proceeding has terminated with the award of the Collector or of the Court made between the aforesaid two dates, the benefit of S. 30(2) will be applied to such award made between the aforesaid two dates, if the proceedings has passed to the stage of appeal before the High Court or the SUpreme Court, it is at that stage when the benefit of S. 30(2) will be applied. But in every case,the award of the Collector or of the Court must have been made between 30 April, 1982 and 24 September, 1984.

In my view, the present award of the Land Acquisition Officer is dated 18.1.1982, the impugned order of the Court (learned Extra Assistant Judge) is dated 13.6.83, therefore, award passed by the reference court is during transitional period between 30.4.82 and 24.9.84. Hence,by virtue of the aforesaid binding decision of the Apex Court,the claimant will be entitled to the benefits of enhanced solatium on the market value to Rs. 10/ per sq.mtr. whereas the interest at the rate of 9% for the first year from the date on which the possession of the acquired land was taken and thereafter at the rate of 15% per annum till the excess amount is deposited in the Court or paid to the claimant. In so far as the interest is concerned, this Court had an occasion to consider the award thereof bearing in mind the transitional provision in FA No. 216 to 241/85 dated 16.4.85 and 304/85 (Coram: D.C. Gheewala and B.S. Kapadia,JJ) and 1998(2) GLH p. 279 in similar manner.

In the result, this appeal is partly allowed. The claimant shall be paid additional compensation at the

rate of Rs. 2.50 per sq.meter over and above the additional compensation awarded by the learned Extra Assistant Judge with 30% solatium on the market value at Rs. 10/ per sq.mtr. and the interest at the rate of 9% from the date of taking over of the possession of the land for the first year and at the rate of 15% per annum till the excess amount is paid or deposited in the court. It is clarified that the interest so awarded shall be worked out at the simple rate of interest. There shall be no order as to costs.

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